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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/922,888	08/06/2001	Wolfgang Biesel	2565/89	9046
26646	7590	12/18/2003	EXAMINER	
KENYON & KENYON			KIM, SUN U	
ONE BROADWAY			ART UNIT	
NEW YORK, NY 10004			PAPER NUMBER	

1723

DATE MAILED: 12/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/922,888

Applicant(s)

BIESEL, WOLFGANG

Examiner

John Kim

Art Unit

1723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 11-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14-18 and 23-25 is/are allowed.
- 6) ☒ Claim(s) 11-13 and 19-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☒ Certified copies of the priority documents have been received in Application No. 09/235,964.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/25/03 has been entered.
2. Claim 11 is objected to because of the following informalities: Recitation of "the dilution device" on line 6 of claim 11 should be corrected to "the diluting device" in order to be consistent with "the diluting device" used therein. Appropriate correction is required.
3. Claims 11-13 and 20-22 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,655,123 (hereinafter referred to as Judson et al). Judson et al teach a blood centrifugation device comprising a centrifuge (52) having a blood suspension inlet (90), a waste line and a concentrated cell outlet line with a concentrated cell pump (66) and a diluting device (76) in fluid connection with the concentrated cell outlet line via a plasma outlet line from centrifuge (52) for delivering plasma e.g. physiologic solution via a plasma pump (70) wherein plasma combines with the concentrated red blood cells to inherently dilute concentrated red blood cells because plasma is of a lighter fluid than red blood cells (see figure 1; col. 7, line 29 - col. 10, line 57)(claims 11-13, 20). Blood suspension inlet line is controlled by a blood pump (62) (see col. 20, lines 29-38; col. 21, lines 36-68). Concentrated red blood cell pump (66) is controlled by red blood cell pump control (706) (see figure 18; col. 27, lines 12-23). Regarding claims 21-22, the recitations that the device processes cell suspensions collected intraoperatively or post-operatively are an intended use and these recitations are not given patentable weight in the apparatus claims.

4. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Judson et al. Judson et al teach a separation unit having separation channels (see figures 5-11; col. 14, line 10 - col. 17, line 52). Claim 19 essentially differs from the apparatus of Judson et al in reciting that the separation unit has a shape selected from the group consisting of a ring or a spiral. It would have been an obvious matter of design choice to modify the separation unit in a shape of ring or spiral, since applicant has not disclosed that the separation unit in a shape of ring or spiral solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with any other shape such as square or diamond or bowl.

5. Claims 14-18 and 23-25 are allowed.

6. Applicant's arguments with respect to claims 11-25 have been considered but are moot in view of the new ground(s) of rejection.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Kim whose telephone number is (571) 272-1142. The examiner can normally be reached on weekdays from 7:00 AM - 3:00 PM.

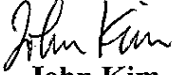
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker, can be reached on (571) 272-1151. The fax phone number for official response is (703) 872-9306.

When sending a draft amendment by fax, please mark the paper as "DRAFT"; otherwise, mark the paper "OFFICIAL". This will expedite the processing of the paper.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0651.

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**John Kim**  
**Primary Examiner**  
**Art Unit 1723**

J. Kim  
December 12, 2003